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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1253

Forrest Murphy, Virginia W. Murphy, Forrest J. Murphy, Jerry J. Murphy, and Mary V. Murphy, Doing Business as Utah Oil Land Company, a Partnership,
Petitioners

v.

Leonard Landsburg, Individually and as Trustee of the Estate of Adolph L. Tafel, Deceased,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRESS OF ALLEN, LANE & SCOTT, PHILADELPHIA

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No. 73-1253

FORREST MURPHY, VIRGINIA W. MURPHY, FORREST J. MURPHY, JERRY J. MURPHY, and MARY V. MURPHY, Doing Business as UTAH OIL LAND COMPANY, a Partnership,
Appellant

vs.

LEONARD LANDSBURG, Individually and as Trustee of the Estate of Adolph L. Tafel, Deceased
Appellee

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

LEONARD LANDSBURG, Trustee of the Estate of Adolph L. Tafel, Deceased, was the owner of 750 shares of the common voting stock of Boericke & Tafel, Inc., (hereinafter referred to as B & T). The said 750 shares constituted a majority of stock and represented 54.94 per cent of the outstanding 1365 common voting shares. The By-Laws of the corporation, however, required a vote of 60

per cent of the common voting stock to control the corporation. Since Petitioners herein owned and operated a competitive homeopathic manufacturing company in St. Louis, Missouri, they evidenced a desire to obtain control of B & T. Respondent tried for many months to obtain control of the said B & T in order to be able to sell to Petitioners a controlling interest in B & T. When it began to appear impossible to obtain such control, so as to complete the sale of the trust shares to the Petitioners, Respondent solicited sealed bids from all known interested parties, including the Petitioners and the management of B & T. Petitioners took the position that they had orally waived the requirements of delivering control and, thus already had a contract of sale with the Respondent, and refused to submit a sealed bid. The management of B & T, however, did submit a sealed bid in the sum of Two Hundred Twenty-One Thousand ($221,000.00) Dollars. The alleged oral bid of Petitioners was in the sum of One Hundred Eighty-Seven Thousand Five Hundred ($187,500.00) Dollars.

In all negotiations between the Respondent and the Petitioners, it was clearly understood by both parties that no sale would be made without the approval of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County. When the solicitations for sealed bids were sent out, all parties, including the management of B & T, were likewise advised that no sale could be final without the express approval of the Orphans' Court. When Respondent received the sealed bid from the said management in the sum of Two Hundred Twenty-One Thousand ($221,000.00) Dollars, and he had before him the demand of the Petitioners that they had a binding contract for the same stock, Respondent presented to the Honorable Harold Saylor, Judge of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County a full and complete petition setting forth all of

the facts involving the rights of both Petitioners and Respondent. (R. 91a-144a) Under Pennsylvania law, the Orphans' Court Division has exclusive jurisdiction over the conduct of the trust of which Respondent is Trustee. A hearing was held by the Honorable Harold Saylor pursuant to the aforesaid petition. Mr. Forrest Murphy, one of the Petitioners, appeared in his own behalf and on behalf of the other Petitioners. He presented his alleged oral agreement to acquire the 750 shares for the aforesaid One Hundred Eighty-Seven Thousand Five Hundred ($187,500.00) Dollars. The management of B & T, also appeared at this hearing and renewed their offer, as set forth in their sealed bid, in the sum of Two Hundred Twenty-One Thousand ($221,000.00) Dollars. Judge Harold Saylor, a veteran Orphans' Court Judge, advised Forrest Murphy, spokesman for the Petitioners, that he fully understood all of the circumstances surrounding negotiations between Forrest Murphy, acting for the Petitioners, and Leonard Landsburg, Trustee, and James Francis Lawler, Esquire, as his attorney. (R. 228a). Judge Saylor advised Petitioners that the disparity in the purchase price was so great that the Judge had no choice but to approve the sale of this trust stock to B & T. When the parties left the Judge's Chambers, Forrest Murphy, speaking for the Petitioners, orally threatened to file a suit in the United States District Court which ultimately resulted in these proceedings.

REASONS FOR DENYING THE WRIT

The final details of the sale of the trust stock to B & T were not worked out at the time Petitioners instituted this litigation in the United States District Court for the Eastern District of Pennsylvania. The final Decree approving the sale of the 750 shares to B & T was dated February 15, 1972. Under the Pennsylvania Rules of Civil

Procedure. Petitioners then had 15 days to file Exceptions to Judge Saylor's Decree, and 45 days to file an Appeal to the Supreme Court of Pennsylvania. Petitioners chose to do neither, but relied on the action that they had instituted in the district court.

Petitioners, in the district court, requested a preliminary injunction. Judge Charles R. Weiner of the United States District Court for the Eastern District of Pennsylvania, heard the evidence and denied Petitioners' request for an injunction, because of the weakness of Petitioners' case. (R. 341a-345a) Respondent then filed a Motion under Rule 56 for summary judgment in his favor. Judge Louis C. Bechtle, of the said court, granted summary judgment to the Respondent on Counts I and II of the Complaint. These two Counts involved the contractual dispute between the parties and contained the same issues which were presented to Judge Harold Saylor in the Orphans' Court Division of the Court of Common Pleas of Philadelphia County. Petitioners appealed the decision of Judge Bechtle to the Circuit Court of Appeals for the Third Circuit. The case was argued before Judges John Biggs, Jr., John J. Gibbons, and Max Rosenn. On December 28, 1973 the said three judges of the Circuit Court of Appeals affirmed the summary judgment granted by Judge Bechtle.

To date, Petitioners have had their claim denied by all six of the six judges who were involved in hearing various aspects of their claim. The point of law which Petitioners bring to this Court is the simple question of whether they can ignore the decision of the appropriate state court, foregoing their rights of appeal in the state system, and reconstitute their suit in a United States District Court.

Respondent argued in the Court of Appeals that the instant action was barred by the doctrine of res judicata. Brief for Appellees at 13-20. The Court of Appeals, however, considered the case one of collateral estoppel, and

not res judicata, but arrived at the same result—the present action was barred.

As set forth in the Opinion of the Court of Appeals,

> An examination of the record of the Orphans' Court proceedings reveals that Murphy raised before that Court precisely the contention urged in the present action. The record reveals that the substance of the entire stock transaction with Murphy, including the negotiations, conditional proposal, conditional acceptance, and all other relevant facts were presented to the Orphans' Court. Murphy and Landsburg personally appeared and participated in the Orphans' Court proceedings and each testified concerning the transaction. The position of the parties in the district court and in the Orphans' Court is essentially the same . . . [A19]

CONCLUSION

Respondent requests this Court to deny Petitioners' Petition for Writ of Certiorari to the Court of Appeals for the Third Circuit.

OSTROFF & LAWLER, P.A.

By: ISIDOR OSTROFF
Counsel for Respondent